

JUN 30 2009

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

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| UNITED STATES OF AMERICA |) | Criminal Action No. 1:07-cr-00011-1 |
| |) | |
| v. |) | <u>2255 ORDER</u> |
| |) | |
| TREMAINE DEVON KAPP, Petitioner. |) | By: Hon. James C. Turk Senior United States District Judge |

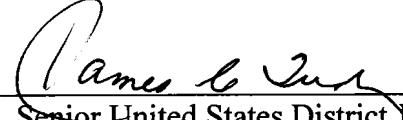
In accordance with the memorandum opinion entered this day, it is hereby

ORDERED

that petitioner's motion to amend (docket #106) is **DENIED**; petitioner's 28 U.S.C. § 1651 motion (docket #107) is **CONSTRUED** as a motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255; the Clerk shall **OPEN** petitioner's § 2255 motion (docket #107) as a § 2255 action; petitioner's § 2255 motion is **DISMISSED without prejudice** as successive; and the new § 2255 action for docket #107 is **STRICKEN** from the active docket of the court.

The Clerk is directed to send copies of this order and the accompanying memorandum opinion to petitioner and counsel of record for the United States.

ENTER: This 30th day of June, 2009.



James C. Turk
Senior United States District Judge